
1994 Wis Eth Bd 8
IMPROPER USE OF OFFICE; JUDGES

A municipal judge should not refer to his or her position as a municipal judge in private law firm letterhead. (OEB94-8)

Facts

[1] This opinion is based upon these understandings:

- a. You are a part-time municipal judge.
- b. You are also a practicing attorney.

Questions

[2] The Ethics Board understands your question to be:

Does the Ethics Code restrict your ability to refer to your position as municipal judge in your private law firm letterhead?

Discussion

[3] The provisions of the Ethics Code most applicable to your question are §§19.45(2) and 19.46(1), *Wisconsin Statutes*.¹ Sections 19.45(2) and 19.46(1)(b) provide, in essence, that

¹ Section 19.45(2), *Wisconsin Statutes*, provides:

19.45 Standards of conduct; state public officials. (2) No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. 11.

Section 19.46(1), *Wisconsin Statutes*, provides:

19.46 Conflict of Interest Prohibited; Exception. (1) Except in accordance with the board's advice under sub. (2) and except as otherwise provided in sub. (3), no state public official may:

(a) Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

(b) Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

No state public official
May use his or her public position or office
To obtain or assist in producing
A substantial private benefit or anything of substantial value.

[4] A municipal judge is a “state public official” subject to the Ethics Code. §19.42(13)(h), *Wisconsin Statutes*. The Ethics Board has consistently held that a state public official may use neither the title nor prestige of office to obtain private employment.² We have advised that public officials should not refer to their public positions in furtherance of private economic pursuits except to the limited extent that an official has occasion to list that affiliation in a resume of professional and civic accomplishments.³ This is especially true where the services an official offers in his or her private capacity are related to the official’s public duties or responsibilities. The rationale for our advise is that a public official should not attempt to trade on official status to gain a purely private benefit, especially in circumstances in which it could appear to a member of the public that an official can provide special access to, or obtain preference from, the government on the customer’s or client’s behalf.⁴ We also refer you to our recent opinion at 1994 Wis Eth Bd 2 for further guidance concerning the pursuit of private interests by a municipal judge.

Advice

[5] The Ethics Board advises that you not refer to your position as a municipal judge in your private law firm letterhead.

² See, e.g., 1994 Wis Eth Bd 02; 10 Op.Eth. Bd. 19 (1988); 9 Op. Eth. Bd. 45 (1987); 9 Op. Eth. Bd. 21 (1986); 8 Op. Eth. Bd. 61 (1985); 1 Op. Eth. Bd. 82 (1977).

³ See, e.g., 9 Op. Eth. Bd. 45, *supra*; 8 Op. Eth. Bd. 61, *supra*.

⁴ We also note that, under the Code of Judicial Ethics, SCR60.11, a full-time judge is prohibited from “lend[ing] . . . the prestige of his or her office to aid or advance the welfare of any private business.”